No. 49128-1-II

THE COURT OF APPEALS, DIVISION II

State of Washington

2ND HALF LLC and AMMAR MANNA'A,

APPELLANTS

Vs.

JAMES AND JUDITH BETOURNAY, and GMAT LEGAL TITLE TRUST 2014-1, US BANK, NATIONAL ASSOCIATION,

RESPONDENTS,

APPELLANT'S OPENING BRIEF

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The Superior Court erred in determining summarily that a trespass had occurred on Betournay's property because the property had been abandoned.

The Superior Courrt erred in awarding the Betournays damages for trespass equal to over eight months of rental value for a condominium the Betournays intended to keep vacant.

The Superior Court erred by disqualifying Mr. Manna's lawyer.

The Superior Court erred in finding Mr. Manna's lawyer in contempt for violation of the disqualification order.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

Does a party who has never been either a potential client, actual client or former client of a lawyer have standing to object to the lawyer's representing that party's opponent on the basis of alleged conflicts of interest?

Can a party disqualify the opponent's lawyer by asserting that the lawyer will be called to testify by the party

seeking disqualification without showing the opponent's lawyer will give relevant testimony unobtainable elsewhere or a showing that the lawyer's testimony would be prejudicial to the testifying lawyer's own client?

A lawyer is disqualified for reasons not specified. The lawyer continues to represent his client outside of courtroom proceedings, including assisting the client to obtain substitute counsel; can the lawyer properly be found in contempt of the disqualification order?

Can a party be found to have trespassed on abandoned property?

At trial, based on a summary judgment that owners of a condominium had their possessory interest trespassed upon, the court awards many months of "reasonable monthly rental value." If the unit was kept vacant to satify the owner's lender is such an award lawful?

STATEMENT OF THE CASE

STANDARD OF REVIEW

This case calls upon the court to review a trial court's determination that Mr. Manna's lawyer should be

disqualified as his chosen representative. A trial court's ruling disqualifying counsel is reviewed for abuse discretion. *Pub. Util. Dist. No. 1 of Klickitat County v. Int'l Ins. Co.*, 124 Wn.2d 789, 812, 881 P.2d 1020 (1994). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State v. Schmitt*, 124 Wn.App. 662, 666, 102 P.3d 856 (2004). Discretion also is abused when it is exercised contrary to law. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007).

Ths case also calls upon the court to review a finding of contempt. A superior court's exercise of its contempt powers is also reviewed for abuse of discretion. In re *Marriage of Eklund*, 143 Wn.App. 207, 212, 177 P.3d 189 (2008). A superior court abuses its discretion if it exercises its contempt powers in a manifestly unreasonable way or exercises its power on untenable grounds or for untenable reasons. *First-Citizens Bank & Trust Co. v. Reikow*, 177 Wn.App. 787, 797, 313 P.3d 1208 (2013).

This case calls upon the court to review a summary determination that a trespass occurred on the Betournay's property. Appellate courts review a summary judgment order de novo, engaging in the same inquiry as the trial court. *Highline Sch. Dist. No. 401 v. Port of Seattle*, 87

Wn.2d 6, 15, 548 P.2d 1085 (1976); *Mahoney v. Shinpoch*, 107 Wn.2d 679, 683, 732 P.2d 510 (1987).

This case also calls upon the court to review a trial court's award of eight month's rental value for a vacant condominium. The trial court findings are unchallenged. Unchallenged findings of fact are verities on appeal. *State v. Bonds*, 174 Wn.App. 553, 562, 299 P.3d 663, review denied, 178 Wn.2d 1011 (2013). The trial court found, however, that the Betournays believed that they were "required to keep Betournay's Unit vacant." What's challenged is the court's conclusion that the Betournays were damaged at all by deprivation of access given the findings. A trial court's conclusions of law reviewed de novo. *Props. v. Jump*, 141 Wash.App. 688, 696, 170 P.3d 1209 (2007).

IMPORTANT FACTS

This case began as an effort by a condominium homeowner's association to collect what it perceived as unpaid dues. CP 1-8.

GMAT LEGAL TITLE TRUST 2014-1, US BANK, NATIONAL ASSOCIATION, ("GMAT") is a division of US Bank. It had a recorded Deed of Trust by which one of the

units owing dues was pledged as security for a loan. GMAT, however, was ***not*** made party to the original action. *Id*; CP 418-19.

A judgement against the condominium unit securing GMAT's note was confessed. CP 413-17; CP 543-47. Because GMAT was not a party to the original collection action, it never received notice of entry of the judgment. *Id.*

Following entry of the judgment, GMAT foreclosed its Deed of Trust. GMAT was the successful bidder at the Trustee's sale and received a Trustee's deed giving it title to the unit. CP 423-24 (¶ 3).

Following the foreclosure by GMAT, the Association set up a sheriff's sale to collect its judgment. CP 426 (¶ 19). The sale occurred ***with*** notice to GMAT, however, GMAT did not attend. CP 715; CP 721-27. A disinterested investor, named Mr. Wu, bought the condominium at the Sheriff's sale for $50,000, receiving a Sheriff's Certificate. CP 714-15.

Mr. Manna'a is an outsider to the originally filed case; he bought Mr. Wu's Sherrif's Certificate. CP 714-15.

GMAT then sought to intervene, and was granted leave to intervene; the motion wasn't opposed. CP 418-22; 472-73. GMAT sought to quiet title to the condominium in its favor, asserting that it's Deed of Trust foreclosure

extinguished the Association's judgment, that the sheriff's sale was therefore improper, and that its Trustee's Deed gave it title to the condominium that was superior to Mr. Manna's sheriff's certificate. CP 635-36. It asserted that it was not a "junior creditor" to the Association, and therefore not a redemptioner under RCW 6.23.010. CP 700-709.

GMAT also promptly sought to disqualify Mr. Manna's counsel, who had acted as lawyer for the Association in obtaining the judgment for dues, and who had organized the sheriff's sale that occurred ***with*** notice to GMAT. CP 55-113.

On its motions calendar, the trial court disqualified Mr. Manna's counsel. CP 179-80. TR of 10/23/2015 hearing.

Notwithstanding the trial court's disqualification order, Mr. Manna's attorney continued to represent Mr. Manna'a, albeit not in any court proceeding, based on the lawyer's belief that he had been disqualified under RPC 3.7 (lawyer as witness). In large part, the continued representation consisted of assisting the client to obtain substitute counsel. CP 233-65; CP 266-69.

When that was brought to the attention of the trial court, the lawyer was found in contempt for violation of the disqualification order. TR hearing 11/25/15; CP 300-04.

An interlocutory appeal was taken on the issue of attorney disqualification. See this court's file No. 48351-3-II. The appellate court declined to accept discretionary review. *Id.*

Parts of the case then settled, parts went to trial. GMAT's assetions about the condominium settled. CP 680-87. The Association did not appear to prosecute its claim for unpaid dues. The Betournays' had filed a third-party claim for trespass against 2nd Half LLC, however, did remain for trial. It was that issue alone that went to trial.

Generally, it went to trial on issues related to damages because the court had, near the beginning, ruled in a partial summary judgment that a trespass had occurred. CP 372 – 374.

The court found that the Betournays had left their unit unrented on account of the fact that their lender so required as part of a program by which the lender might accept a Deed in Lieu of Foreclosure. See Finding No. 11. CP 378. Nonetheless, the court awarded damages to the

Betournays for trespass equal to 8 months of rental value. See Conclusion No. 3 and 4; Finding No. 14. CP 378; 379.

This timely appeal followed. CP 396-97.

APPLICABLE LAW and ARGUMENT

Mr. Manna's Lawyer was improperly disqualified if the disqualification was based on alleged client conflicts because GMAT hasn't standing to raise this issue.

First of all, it's somewhat unclear what was the precise basis for disqualification of Mr. Manna's lawyer. The order of disqualification does not cite some specific rule on disqualification. CP 179-80.

GMAT's motion to disqualify cites RPC 1.7 (CONFLICTS OF INTEREST: CURRENT CLIENTS). CP 61. It cites RAP 1.9 (DUTIES TO FORMER CLIENTS). CP 62. At the hearing, there was considerable discussion about the lawyer as witness (RCP 3.7). Se generally, transcript of hearing 10/23/2015. Again, the order itself does not specifically identify any applicable RCP. CP 179-80.

As to conflicts with either former or current clients, Because GMAT is neither a current nor former client, it lacks standing to assert any claim of conflict. *See Burnett v.*

Department of Corrections, 187 Wn.App. 159, 170, 349 P.3d 42, (Wash.App. Div. 3 2015):

> We hold Virginia Burnett lacks standing to assert the disqualification of the Attorney General's Office since any conflict of interest is between other parties. Although no Washington decision has addressed standing needed to seek disqualification of counsel, the majority, if not universal, rule is that only a party who has been represented by the conflicted attorney has standing. See In re Yarn Processing Patent Validity Litig., 530 F.2d 83, 88 (5th Cir. 1976); Info. Sys. Assocs. v. Phuture World, Inc., 106 So.3d 982, 984-85 (Fla. Dist. Ct. App. 2013); Great Lakes Constr., Inc. v. Burman, 186 Cal.App.4th 1347, 1356, 114 Cal.Rptr.3d 301 (2010); 7 Am.Jur.2d Attorneys at Law § 188 (2007); see generally Eric C. Surette, Annotation, *Standing of Person, Other than Former Client, to Seek Disqualification of Attorney in Civil Action*, 72 A.L.R. 6th 563 (2012). The standing rule draws its strength from the logic of the rule itself, which is designed to protect the interests of those harmed by conflicting representations rather than to serve as a weapon in the arsenal of a party opponent. Mills v. Hausmann-McNally, SC, 992 F.Supp.2d 885, 891 (S.D. Ind. 2014). Since the Attorney General's Office has not represented Virginia Burnett, she lacks standing to forward her motion of disqualification.")

To the extent, the trial court disqualified Mr. Manna's attorney based on conflicts with clients or former clients, the trial court abused discretion because GMAT hasn't standing to raise the issue of conflicts. That's so because GMAT was not, and never was, a client of Mr. Manna's counsel.

Mr. Manna's Lawyer was improperly disqualified if the disqualification was based on his potential status as a witness because GMAT failed to make the requisite showing.

It should be observed that, at the time of disqualification, no witness list of any kind had been submitted to the court. The idea of disqualification based on RPC 3.7 wasn't briefed by GMAT specifically either in its motion, or its reply. See CP 55-66 and CP 174-78.

The prospect of lawyer as witness seems to have been raised sua sponte by the court. See Transcript of hearing 10/23/15.

When interpreting RPC 3.7 which governs the lawyer as witness, courts have been reluctant to disqualify an attorney absent compelling circumstances. See *Public Utility Dist. No. 1 of Klickitat County v. International Ins. Co.*, 881 P.2d 1020, 124 Wn.2d 789 (Wash. 1994) (citing with approval to *Smithson v. United States Fid. & Guar. Co.*, 186 W.Va. 195, 199, 411 S.E.2d 850 (1991) and *Cottonwood Estates, Inc. v. Paradise Builders, Inc.*, 128 Ariz. 99, 105-06, 624 P.2d 296 (1981)).

A motion for disqualification based on attorney as witness must be supported by a showing that the attorney will 1) give evidence material to the determination of the

issues being litigated, that 2) the evidence is unobtainable elsewhere, and 3) that the testimony is or may be prejudicial to the testifying attorney's client. *PUD No. 1, supra*, 124 Wn.2d at 812.

Here, GMAT presented a complicated discussion of facts showing that Mr. Manna's attorney had been *involved* in various stages of the proceedings, but exactly what would be the subject of testimony wasn't explained. What clearly hasn't been shown is why the evidence could not be obtained elsewhere, such as calling Mr. Manna'a, Mr. Wu, or 2nd Half's manager. A fair reading of GMAT's submissions shows that it basically took the position that the complex previous transactions created conflicts between various other parties, and that these conflicts among other parties should result in disqualification of Mr. Manna's attorney. But, again, the idea of disqualification under RPC 3.7 really wasn't brought up by GMAT.

Most importantly, *one* of the required showings for disqualifying a lawyer under RPC 3.7 is that the expected testimony of the lawyer is or may be prejudicial to the testifying attorney's client. *PUD No. 1, supra*, 124 Wn.2d at 812. There's no showing in the record of what relevant

information the lawyer might be called to testify about which could possibly be prejudicial to Mr. Manna'a.

Because the record is devoid of information sufficient to meet the three-part criteria for disqualification under RPC 3.7, there is no tenable basis for using that rule to disqualify Mr. Manna's attorney, and the trial court abused its discretion by disqualifying the attorney.

The disqualification of an attorney destroys an attorney-client relationship; it deprives a party of representation of its own choosing. Motions to disqualify, therefore, should be viewed with extreme caution." *Zimmerman v. Mahaska Bottling Co.*, 19 P.3d 784, 788 (Kan. 2001); see also *Daines v. Alcatel*, 194 F.R.D. 678 (E.D. Wash. 2000) (observing that "[d]isqualification is 'a drastic measure which courts should hesitate to impose except when absolutely necessary'") (quoting *United States v. Titan Pacific Construction Corporation*, 637 F.Supp. 1556, 1562 (W.D. Wash. 1986)). Accordingly, "[a] motion to disqualify counsel requires the court to balance the right of a party to retain counsel of his choice and the substantial hardship which might result from disqualification as against the public perception of and the public trust in the judicial system."

Lamb v. Pralex Corp., 333 F.Supp.2d 361, 363 (D.Virgin Islands 2004).

If, as here, the motion is brought by someone who is neither the client or former client of the attorney being disqualified, but rather by the opposition party, and if there's not showing of what material testimony might be solicited from the lawyer, why that information cannot be obtained by calling others, or how such testimony might be prejudicial to the lawyer's own client, then there's no proper basis for disqualification.

There's an obvious tactical advantage to be gained by disqualifying the opponent's lawyer which the court should guard against. Here, the court abused its discretion as there is no tenable basis for disqualification.

Mr. Manna's Lawyer was improperly held in contempt because the disqualification order does not reasonably indicate that related activities, such as assisting Mr. Manna'a to locate substitute counsel are activities prohibited by court order.

RCW 7.21.010(1)(b) defines "contempt of court" as intentional "disobedience of any lawful judgment, decree, order, or process of the court." Washington statutes distinguish between criminal contempt sanctions that are punitive and civil contempt sanctions that are remedial.

RCW 7.21.010(2)-(3); *State v. T.A.W.*, 144 Wn.App. 22, 24, 186 P.3d 1076 (2008); *see also In re Marriage of Didier*, 134 Wn.App. 490, 500-02, 140 P.3d 607 (2006). This case involves civil contempt. The party seeking to impose civil contempt bears the burden of proving contempt by a preponderance of the evidence. *State v. Boren*, 44 Wn.2d 69, 73, 265 P.2d 254 (1954).

To find contempt, a superior court must find that a party's violation of a previous court order was intentional. *Holiday v. City of Moses Lake*, 157 Wn.App. 347, 355, 236 P.3d 981 (2010). "Implicit in [the definition of contempt] is the requirement that the contemnor have knowledge of the existence and substantive effect of the court's order or judgment." *In re Estates of Smaldino*, 151 Wn.App. 356, 365, 212 P.3d 579 (2009).

Where a finding of contempt is based on a violation of an order, the superior court must strictly construe the order in favor of the contemnor. *In re Marriage of Humphreys*, 79 Wn.App. 596, 599, 903 P.2d 1012 (1995). "In contempt proceedings, an order will not be expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought."

Johnston v. Beneficial Mgmt. Corp. of Am., 96 Wn.2d 708, 712-13, 638 P.2d 1201 (1982).

Here, the order of disqualification doesn't identify the basis for disqualification. That's important because disqualifications based on conflicts of interest require the lawyer's prompt withdrawal. That's rquired to protect the rights of the objecting party who is likely to be damaged by continued conflicted representation.

However, a disqualification under RPC 3.7 is more limited in its effect. The rule indicates that "a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: [various exceptions apply]."

Comment 2 to the rule explains: "The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation."

Comment 3 further explains: "To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(4)."

Comment 4 further explains: "that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses."

All of this is important because contempt was found due to the attorney's continued representation of Mr. Manna'a after entry of the order, and in particular because the attorney continued on to assist Mr. Manna'a in securing new counsel. CP 184. (page 4, lines 25-28 of the Motion for Sanctions.) A disqualification under RPC 3.7 would not compel immediate withdrawal for all purposes, although it disqualifies the attorney from acting "at a trial" and in similar proceedings where testimony is taken and subject to dispute. Because the purpose of the rule is to avoid confusion of the tribunal as to "testimony" and "argument," the rule doesn't implicate activity at most pre-trial

proceedings where the court is not called upon to "find facts" or resolve disputed testimony.[1]

Oddly, in part, GMAT complained about actions taken at a September 28, 2015 hearing, but that occurred before the court's disqualification order was entered. CP 182. Motion for sanctions at page 2, lines 11-19.

Here, of course, because GMAT was neither a client nor former client, conflicts of interest could not properly be the basis for disqualification, and for reasons outlined above, GMAT hadn't even made the showing required for disqualification under RPC 3.7. Nonetheless, contempt judgments normally stand even if the violated order is later deemed erroneous or invalid. *State v. Noah*, 103 Wn.App. 29, 46, 9 P.3d 858 (2000), review denied, 143 Wn.2d 1014 (2001). But a contempt order must be reversed if the underlying order is void as it would be if the court lacked jurisdiction to enter it. *Noah*, 103 Wn.App. at 46.

Here, the Superior court had jurisdiction to enter the order of contempt. It was not void. Nevertheless, it's important that no clear basis for disqualification is specified

[1] An RPC 3.7 disqualification does impose on counsel the duty to promptly arrange for trial counsel so as not to prejudice the client as necessarily it's known that the disqualified attorney can't act in that capacity. Here, ironically, in part GMAT complained about even assisting Mr. Manna'a to obtain substitute counsel.

in the order or in the court's commentary. At least, it's not clear that disqualification was based on client conflicts. To the extent the disqualification appears to be based on RPC 3.7, the basis for contempt just doesn't show the requisite violation because implicit in a disqualification under RPC 3.7 is that continued representation in a limited capacity – outside of court proceedings – just isn't implied.

If the court's intent was to preclude Mr. Manna'a's lawyer from even assisting him in finding new counsel, it's simply not clear by any of the proceedings or by the court order on its face. The order specifies "John Stratford Mills, is disqualified from further representing Third Party Defendant Ammar Manna ***in the above action***, as well as any predecessor or assignee or successor in interest to Ammar Manna." (Emphasis added.) It's not apparent that "in the above action" would prohibit even assisting Mr. Manna'a in obtaining substitute counsel or as acting in some capacity as general counsel to Mr. Manna'a.

The trial court erred in summarily determining that a trespass had occurred because the Betournays had abandoned the property.

From May of 2013, long before 2nd Half LLC or its manager, Jeff Graham, was taking action at North Oakes

Condominium, the Betournays had abandoned their unit. It was vacant. It was not being rented. The Betournays themselves assert so much in Mr. Betournay, Sr.'s declaration filed 9/8/2014 at paragraph 2:

> 2. Unfortunately, I, along with my wife Judith, are the record (County) owners of the condominium located at 1921 North Oakes Street, Unit A, Tacoma, Washington (hereinafter "Unit A"), but we have relinquished possession, control along with the benefits and burden of homeownership to OCWEN Loan Services, LLC (hereinafter "OCWEN") which is evidenced by the 1099-A OCWEN issued regarding the subject property on May 13, 2013 which is attached hereto with all appropriate redactions.

CP 17, paragraphs 4, 5, and 6. *See also* trial findings No. 10, 11, 12 and 13, CP 378-79.

The bank recorded a Deed in Lieu of Foreclosure on 9/14/2015. CP 359.

The doctrine of standing prevents "a plaintiff from asserting another's legal rights." *Trinity Universal Ins. Co. of Kan. v. Ohio Cas. Ins. Co.*, 176 Wn.App. 185, 199, 312 P.3d 976 (2013), review denied, 179 Wn.2d 1010 (2014). The doctrine performs this task by requiring a plaintiff to show, among other things, "a personal injury fairly traceable to the challenged conduct and likely to be redressed by the

requested relief." *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986).

Accepting uncritically the declarations of the Betournays submitted, and even if some technical trespass occurred, their Unit A has been improved in its condition, and belongs to the bank to whom they deeded it away.

If the Betournays could demonstrate that they somehow had been trying to rent it up before it's abandonment to the bank, and had, in some way, been prevented or obstructed in renting it for a time by Jeff Graham's activity, then they might have some sort of action for trespass. But, in light of the fact that Mr. Betournay and his wife, by his own admission, "have relinquished possession, control along with the benefits and burdens of homeownership to OCWEN Loan Services, LLC (hereinafter "OCWEN") . . .," it's impossible for the Betournays to make a claim for trespass. Damages, if any, are the purview of OCWEN, and the Betournays, by virtue of their abandonment of the unit have no standing to assert a claim against any of the defendants here.

Long before the trial, the Betournays had abandoned the property and had even deeding it to their lender (CP 359) by lieu of foreclosure to obtain a discharge of liability for the

loan. *See* RCW 61.24.100. Under such circumstances, they can have no claim for trespass.

There was no trespass because actions of defendants were permitted under the Declaration of Condominium and RCW 64.34.328.

Accepting uncritically all of the declarations of the Betournays, they establish that Jeff Graham entered their Unit without express permission. But, both the Declaration of Condominium (quoted verbatim at CP 353-54) and RCW 64.34.328 provide every owner with a limited easement and access to all other units as is "reasonably necessary" "for maintenance, repair, and replacement of the owner's unit."

So, while it's admitted that Mr. Graham in fact entered the unit without express permission from the Betournays – who had apparently abandoned the unit – they haven't described anything except that he changed the doors and locks, and put utilities in his name – something that was reasonably necessary to secure water for the rest of the building and to get the exterior lights functioning. Inasmuch as the law permits Jeff to do all that, the court erred in its summary determination that a trespass occurred.

Using lost monthly rental damages are arbitrary and unsupported by any appropriate findings because the Betournays weren't trying to rent their unit.

The court awarded $8,075, being equal to 8.5 months of rent at the reasonable value of $950 a month, found by the trial court to be the "reasonable monthly rental value" of the Betournay's unit. CP 379 (finding no. 14; conclusions 3 and 4).

But, there is no finding or any evidence that the Betournays were even trying to rent their unit or that they were prevented from doing so by any action of the defendants. On the contrary, the sworn statement of the unit owner was that it had been relinquished to the bank and that it had to be kept vacant. CP 17, paragraphs 4, 5, and 6. *See also* trial findings No. 10, 11, 12 and 13, CP 378-79.

Accordingly, the award is simply arbitrary.

CONCLUSION

The trial court erred in finding that the Betournay's had any standing to even allege trespass inasmuch as they'd abandoned the property voluntarily and admitted to doing that; they formally transferred title to the bank by deed long before the trial.

Even if a technical trespass occurred, the trial court erred in awarding 8.5 months of rent as the measure of damages inasmuch as the Betournays testified that they needed to keep the unit vacant to statisfy their lender and therefore weren't trying to rent up the unit and turned down no renters.

If there is a claim for damages on account of trespass, it is the lender, not the Betournays who have that claim.

Mr. Manna's lawyer was improperly disqualified. GMAT, who sought the disqualification, was neither a client or former client, nor was GMAT ever a prospective client. Accordingly, they don't have standing to raise any issue of conflicts.

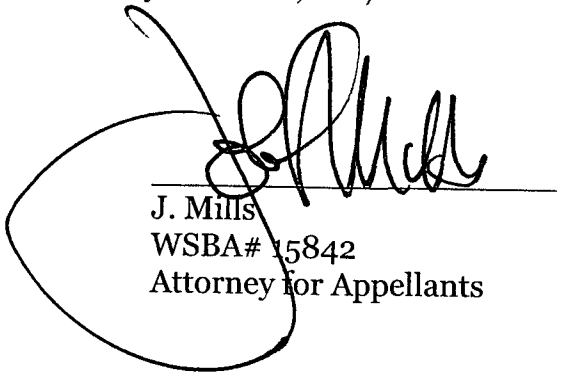
Whatever Mr. Manna's attorney might be called to testify about by GMAT, there is nothing in the record to show that such testimony could not be obtained through other witnesses, that the testimony would be particularly relevant to anything at issue, or that the testimony would be prejudicial to Mr. Manna'a. Accordingly, RPC 3.7 could not properly have been a basis for disqualification.

As to contempt, the court's order does not impliedly preclude representation outside of court, and certainly doesn't expressly preclude assisting Mr. Manna'a to find

substitute counsel, nor is there any equitable or legal reason to read that into the court order. The court order obtained by GMAT does not necessarily allow it to browbeat Mr. Manna'a as if he's wholly unrepresented. Accordingly, the finding of contempt should be vacated.

In sum, this court should 1) vacate the finding of contempt and the sanctions order, 2) vacate the order disqualifying counsel and reinstate Mr. Manna's counsel, 3) vacate the judgment in favor of the Betournays, and 4) remand the case for further proceedings consistent with its ruling.

DATED this 20th day of March, 2017.



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WASHINGTON STATE COURT OF APPEALS
Division Two

2nd HALF LLC and AMMAR MANNA'A, Appellants, Vs. JAMES and JUDITH BETOURNAY, ET AL, Respondents.	No. 49128-1-II DECLARATION OF SERVICE of OPENING BRIEF

The undersigned declares under penalty of perjury that Appellant's Opening Brief was served this day on all parties as follows:

1. To Ms. Phillips this date by a) email to her regular email accounts, and b) to Ms. Phillips by also placing it with ABC messenger for service at her regular business address on Mercer Island, WA.

2. To James and Judith Betournay by placing a copy in the U.S. Mail, postage prepaid and addressed to: James and Judith Betournay, 16258 South Holcomb Blvd., Oregon City, OR 97045-8290; there address as listed on Mr. Boice's Notice of Withdrawal dated 1-24-2017 and filed in this case.

DATED this 20th day of ~~February~~ March, 2017.

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